

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

|   |   |                   |
|---|---|-------------------|
| EQUAL EMPLOYMENT OPPORTUNITY<br>COMMISSION,   | § |                   |
|   | § |                   |
|   | § |                   |
| Plaintiff,  | § | CIVIL ACTION NO.  |
|   | § |                   |
| v.  | § | 4:08-CV-02429     |
|   | § |                   |
| O'REILLY AUTOMOTIVE, INC., d/b/a<br>O'REILLY AUTO PARTS and<br>OZARK AUTOMOTIVE DISTRIBUTORS, INC | § |                   |
|   | § |                   |
|   | § |                   |
| Defendants  | § | <u>JURY TRIAL</u> |

**JOINT MOTION TO MODIFY SCHEDULING ORDER**

TO THE HONORABLE COURT:

Comes now Plaintiff Equal Employment Opportunity Commission and Defendants O'Reilly Automotive, Inc., d/b/a O'Reilly Auto Parts and Ozark Automotive Distributors, Inc. in the above referenced civil action and file this Joint Motion to Modify Scheduling Order and in support would show the Court the following:

1. Plaintiff filed its Original Complaint on August 7, 2008 and First Amended Complaint on September 11, 2008.
2. On October 30, 2008, the Court issued its Scheduling Order with the Discovery deadline of August 31, 2009 and Motions Cut-off deadline of September 30, 2009.
3. On August 27, 2009, the parties filed a Joint Motion to Modify Scheduling Order to extend the discovery deadline to November 30, 2009 and motions deadline to December 31, 2009 to allow time for the taking of numerous depositions by both parties. The Court granted the parties' motion on August 27, 2009.

4. The Court has not set a Joint Pretrial Order date or a Trial date.

5. The parties have only been able to complete five (5) of the nearly thirty (30) identified depositions and have determined that they will not be able complete all of the needed depositions by the November 30, 2009 deadline. Contributing to the parties' inability to complete discovery within the current scheduling order deadline is that Defendants' counsel was unavailable for most of the month of October due to a jury trial in Judge David Hittner's court, and Plaintiff's counsel will be unavailable for much of November 2009 and some of early December 2009 due to his taking parental leave.

6. The parties request that the Court modify its Scheduling Order to extend the discovery deadline until January 31, 2010 and the Motion Cut-off deadline until February 28, 2010.

7. The parties have determined that the additional time requested is necessary to locate, schedule and take the depositions of witnesses.

8. Accordingly, the parties request that the Court issue an order modifying the scheduling order as follows:

January 31, 2010      DISCOVERY shall be completed by this date.

February 28, 2010      MOTION CUT-OFF. No motion, including motions to exclude or limit expert testimony under Fed.R.Evid. 702, shall be filed after this date except for good cause shown. See LR 7.

Respectfully submitted,

s/Timothy M. Bowne (bp)  
Timothy M. Bowne  
Attorney-in-Charge  
Texas Bar No. 00793371  
S.D. Tex. No. 20023  
Equal Employment Opportunity  
Commission  
1919 Smith Street, 7<sup>th</sup> Floor  
Houston, Texas 77002  
(713) 209-3395  
(713) 209 3402 (Fax)  
Timothy.bowne@eeoc.gov

**LUTTRELL & WILLIAMS, P.C.**  
3000 Weslayan, Suite 245  
Houston, Texas 77027  
(713) 877-1077  
(713) 877-1089 fax  
lwjpc@aol.com

s/John M. Williams  
John M. Williams  
Texas Bar No: 21554200  
Southern District ID: 11589  
L. Don Luttrell  
Texas Bar No. 12708630  
Southern District ID: 10208

Attorneys for Defendants  
O'Reilly Automotive, Inc and  
Ozark Automotive Distributors, Inc.

**JACKSON LEWIS, L.L.P.**

Teresa Valderrama  
State Bar No. 20422500  
Wedge International Tower  
1415 Louisiana, Suite 3325  
Houston, Texas 77002  
(713) 658-7868  
(713) 650-0405

Attorneys for Defendants  
O'Reilly Automotive, Inc and  
Ozark Automotive Distributors, Inc.

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the parties Joint Motion to Modify Scheduling Order was delivered to all counsel of record on the 10th day of November, 2009 via the electronic case filing system of the United States District Court for the Southern District of Texas.

s/John M. Williams  
John M. Williams